

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32292
Docket No. SG-33006
97-3-96-3-393**

The Third Division consisted of the regular members and in addition Referee James E. Conway when award was rendered.

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(CSX Transportation, Inc. (former Baltimore and
(Ohio Railroad Company)**

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the CSX Transportation Company (B&O):

Claim on behalf of J. E. Napper, T. J. Rich, C. M. Kreuzer, W. E. Baudendistel and D. J. Schroeder for payment of 22 hours each at the straight time rate, account Carrier violated the current Signalmen's Agreement, particularly Agreement No. 15-18-94, when it used a System Signal construction Gang to perform work at the New River Interlocker on March 27 and 28, 1995, and deprived the Claimants of the opportunity to perform this work. Carrier's File No. 15(95-215). BRS File Case No. 9802-B&O.”

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

Claimants are Signalmen regularly assigned to signal maintenance positions on the Carrier's Toledo-Indianapolis Division. This dispute was triggered by Carrier's use of a System Signal Construction Gang at the New River Interlocker on signal equipment that had been damaged in a train derailment on March 25, 1995. The claim presented alleges a violation of Agreement No. 15-18-94 dated November 21, 1994. That Agreement established System Signal Construction Gangs whose work was confined to certain year round construction work throughout the territory covered by the Agreement. "Construction work" is defined therein as follows:

"Definitions:

Construction Work - That work which involves the installation of new equipment and systems and the major revision of existing systems, and not that work which involves maintaining existing equipment or systems. Replacing existing systems as a result of flood, acts of God, derailment or other emergency may also be construction work."

Carrier asserted during the handling on the property that the challenged repair work was of an emergency nature because the interlocking system was critical to the continued operation of the railroad. The Organization rejected that argument, citing the two days that had elapsed between the derailment and the commencement of work by the System Gang.

Our review of the record here compels the conclusion that Carrier's use of a System Gang to repair damage caused by a derailment was an assignment consistent with the work for which such gangs were established, and did not violate the Agreement. The Rule expressly allows the use of System Gangs to replace systems damaged as a result of "derailment or other emergency." By their use of the disjunctive term "or other," the parties appear to have manifested their intention to consider the replacement of systems damaged by derailments as included among the types of construction work necessitated by an emergency that may be performed by System Gangs. Accordingly, while a situation could conceivably exist where prolonged inattention to derailment damage might call into question the emergent nature of the repairs, there are no such facts on this record, and no basis for reading the Rule as restrictively as does the Organization. The uncontested evidence here indicates the Carrier took two days to

clean up the derailment site prior to starting construction. Because derailments are not "one-shoe-fits-all," the Rule imposes no uniform deadlines for commencing repairs. We conclude that if a more expeditious maintenance schedule than that which was followed here is to be read into the Rule, it was incumbent upon the Organization to establish that such an implied condition was contemplated by the parties.

From its initial denial of the claim, the Carrier maintained that the work accomplished by the System Gang at the New River Interlocker was emergency work, and no facts were established by the Claimants to refute the Carrier on this point. We therefore adhere to the well established line of authority on this and other Divisions of the Board holding that when material statements are made by one party and not effectively rebutted by the other, those statements are accepted as fact. In reaching that conclusion, we have disregarded the Carrier's "Statement of Facts" in its Submission to the extent that statement incorporated significant factual material not produced in the case handling on the property.

For the reasons stated, the claim is denied.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 13th day of November 1997.